



excessively long document. Requiring Blue Spike to respond to 3676 pages by the current deadline would only compound the prejudice to Blue Spike.

Blue Spike is forced to retain another expert to respond to the 3676-page invalidity report, in addition to the other expert report by Dr. Strawn. Specifically, Blue Spike plans to disclose Dr. Yannis Papakonstantinou. Blue Spike is currently in the process of assessing Dr. Papakonstantinou's expert disclosure requirements in order to ascertain if the defendants will move to strike him. Since the defendants are relying upon "secret prior art" that has been marked highly confidential and attorneys' eyes only, Blue Spike must disclose Dr. Papakonstantinou under the protective order.

Additionally, our small firm representing Blue Spike unexpectedly lost a key associate in this litigation, Peter Brasher, without notice. As a result of Mr. Brasher's abrupt departure, our firm suffered a calendaring and distribution issue with respect to Audible Magic's report for \$6 million in counterclaim damages. This oversight was first brought to the firm's attention last week after a discussion with Special Master McGovern. Blue Spike needs to respond to this report. That Blue Spike has not yet responded is our firm's fault, not Blue Spike's.

Blue Spike's requested deadline of May 21, 2015, in no way will impact the Order's pretrial conference, set for October 5, 2015.<sup>2</sup>

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<sup>2</sup> This proposed deadline is also two weeks prior to the current June 5, 2015 deadline for dispositive motions.

For the above stated reasons, Blue Spike, LLC respectfully requests the Court modify the scheduling order as shown above.

Respectfully submitted,

/s/ Randall Garteiser

Randall T. Garteiser

Lead Attorney

Texas Bar No. 24038912

rgarteiser@ghiplaw.com

Christopher A. Honea

Texas Bar No. 24059967

chonea@ghiplaw.com

Christopher S. Johns

Texas Bar No. 24044849

cjohns@ghiplaw.com

Kirk J. Anderson

California Bar No. 289043

Molly A. Jones

California Bar No. 301419

GARTEISER HONEA, P.C.

218 North College Avenue

Tyler, Texas 75702

(903) 705-7420

(888) 908-4400 fax

*Counsel for Blue Spike, LLC*

### **CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email.

/s/ Randall T. Garteiser

### **CERTIFICATE OF CONFERENCE**

I certify that on behalf of Blue Spike, LLC, I met and conferred with counsel for Defendant Audible Magic on April 21, 2015.

/s/Randall T. Garteiser